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Constitutional Law - Constitutionality of the Submerged Lands Act - Property Power of Congress

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Notes

CONSTITUTIONAL LAW—CONSTITUTIONALITY OF THE SUBMERGED LANDS ACT—PROPERTY POWER OF CONGRESS

The States of Alabama and Rhode Island, invoking the original jurisdiction of the Supreme Court,[1] entered motions for leave to file complaints against the States of Louisiana, Florida, Texas and California, the Secretaries of the Treasury, Interior, and Navy, and the Treasurer of the United States. The petitioners requested that the Submerged Lands Act[2] be decreed unconstitutional as an invalid exercise of Congress' trusteeship over public property[3] and as an abdication or delegation by Congress to the defendant states of essential and non-delegable elements of national sovereignty. In the alternative they requested that the act be declared to give the defendant states no right to, or power, authority, or dominion over any lands or natural resources, which was vested by the Constitution in the United States to be exercised for the benefit of all the states and the citizens of the United States. In case the Court should recognize these rights in defendant states, petitioners asked that the act be construed to grant to the defendant States of Louisiana, Florida and Texas no rights to the maritime belt lying beyond the three-mile limit. The petitioners further requested that the defendant states be enjoined from exercising control over this area and extracting natural resources therefrom; that the named federal officials be enjoined from acquiescing in the claims of the defendant states under color or authority of the Submerged Lands Act; and that these officials be restrained from paying to defendant states the funds collected while the lands were under federal control and held in trust by those officials for the United States and its citizens. The Supreme Court, in a per curiam opinion, denied the motions, Justices Black and Douglas dissenting.[4] The Court

1. U.S. CONST. Art. III, § 2(1).
2. 67 STAT. 29 (1953), 43 U.S.C.A. § 1301 *et seq.* (Supp. 1953).
3. U.S. CONST. Art. IV, § 3(2).
4. Chief Justice Warren did not participate. Justice Reed, in a concurring opinion, Alabama v. Texas, 74 Sup. Ct. 481, 482 (1954) stated that the right ceded by Public Law 31 (the Submerged Lands Act) was a property right within the disposal power of Congress. Justice Black and Justice Douglas, in separate dissents, *id.* at 483, 486, expressed the view that Congress' power to enact Public Law 31 was subject to sufficient doubt to require that the complainant states be given a full opportunity to challenge the statute.

stated that under Article IV, Section 3, Clause 2, of the Constitution and the interpretations of that article in prior decisions,[5] Congress has unlimited power to dispose of and make rules and regulations respecting the territory and property of the United States and that it is not for the courts to say how that trust shall be administered. *Alabama v. Texas* and *Rhode Island v. Louisiana*, 74 Sup. Ct. 481 (1954), *rehearing denied*, 74 Sup. Ct. 674 (1954).

The petitioners based their claim on the contention that the property power of Congress must ultimately be limited by the government's position as trustee for the nation and that a valid disposition of government property must inure to the benefit of the public. In support of this proposition, they relied on *Helvering v. Davis*,[6] which held that federal spending must be for the general welfare, and on *Illinois Central R.R. v. Illinois*,[7] which invalidated a transfer of state-owned property to a private corporation as a perversion of the trust under which the property was held for the benefit of all the citizens of the state. It was contended that the Submerged Lands Act was not a valid exercise of the trust granted to the federal government because the government was granting national assets valued at over fifty billion dollars to four states to the prejudice of the other states.[8]

The petitioners further insisted that Congress had no power to dispose of the federal government's right to the resources in question because the "paramount rights" in the land and resources did not constitute "property" within the meaning of Article IV, Section 3, Clause 2, of the Constitution, but formed instead part of the non-delegable responsibility of the federal government to provide for the common defense and to conduct foreign relations. The two dissenting Justices agreed and argued that this was the basis of the government's position in *United States v. California*[9] and the subsequent *United States v. Texas*[10]

5. The cases referred to by the Court are United States v. California, 332 U.S. 19, 27 (1947); United States v. Midwest Oil Co., 236 U.S. 459, 474 (1915); Light v. United States, 220 U.S. 523, 536 (1911); Camfield v. United States, 167 U.S. 518, 524 (1897); United States v. Gratiot, 14 Pet. 526, 537 (U.S. 1840).

6. 301 U.S. 619 (1937).

7. 146 U.S. 387 (1892).

8. They argued that the distribution of the funds collected while the lands were under federal control was invalid for the same reason.

9. 332 U.S. 19 (1947).

10. 339 U.S. 707 (1950).

and *United States v. Louisiana*[11] decisions, and expressed reluctance to overrule those decisions. The majority of the Court were satisfied with the wording of the act, which specifically reserved to the United States not only the servitude of navigation, but the "rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs."[12]

The petitioners also questioned whether under international law the lands beyond the three-mile limit constituted "property" of the United States. The use of the term "paramount rights" by the executive, legislative, and judicial branches of the government indicates that all are aware of the far-reaching consequences of claiming fee title to lands lying under the high seas.[13] As argued by Rhode Island "both by rule of international law and determination of the United States Government in the conduct of its foreign relations, the permissible width of the belt of territorial waters is three nautical miles." The United States has refused to recognize the claims of foreign powers to territory beyond the three-mile limit along their coasts,[14] and as recently as 1951 the International Court of Justice "has treated as a justiciable question the claims of the United Kingdom that Norway

11. 339 U.S. 699 (1950).

12. 67 STAT. 29, 32 (1953), 43 U.S.C.A. § 1301, 1314 (Supp. 1953).

13. By Presidential Proclamation of September 28, 1945, President Truman first announced the interest of the United States in the area in question, stating that the "Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected." 40 AM. J. INT'L L. 45 (Supp. 1946). The Supreme Court, in the *California, Louisiana,* and *Texas* decisions spoke of the "paramount rights" of the United States to the area and in the instant decision made no mention of fee title. See Vom Baur, *Confiscation by Judicial Decree: The Procedural Course of the Tidelands Cases,* 27 TULANE L. REV. 286, 307 *et seq.* (1953). The Congress itself came closest to claiming actual ownership of the area in the Submerged Lands Act, stating: "The United States hereby releases and relinquishes unto said states . . . , except as otherwise reserved . . . , all right, title, and interest of the United States, *if any it has,* in and to all said lands. . . ." (Italics supplied.) See 67 STAT. 29, 30, 43 U.S.C.A. §§ 1301, 1311 (Supp. 1953). In the legislative discussion preceding the adoption of the Submerged Lands Act, the claims of the United States were referred to as "quit-claim" rights. See 2 U.S. CODE CONG. & ADMIN. NEWS, 83d Cong., 1st Sess., 1953, p. 1439 *et seq.* (1953).

14. With respect to Mexico, see 1 HACKWORTH, DIGEST OF INTERNATIONAL LAW 639-41 (1940), as cited by Brief for Alabama in Support of Motion for Leave to File Complaint, p. 21.

was, by legislation attempting to include part of the high seas within its boundaries."[15]

Several constitutional and procedural questions raised by the pleadings were not discussed by the Court. An important issue not dealt with was whether the petitioners could invoke the Supreme Court's original jurisdiction. Both Alabama and Rhode Island claimed standing in dual capacity, as sovereigns protecting their interests as states, and as quasi-sovereign and *parens patriae* attacking a measure having an adverse effect upon the economic welfare of a substantial number of their citizens. Alabama and Rhode Island, as sovereigns, contended that the Submerged Lands Act, by granting the Gulf states the right to extend their boundaries beyond the limits permitted the other coastal states,[16] and by granting to the defendant states the only area known to possess minerals in valuable quantities,[17] denied the petitioners the equal footing and equal treatment guaranteed them by the Constitution. Alabama, in addition, contended, for the same reasons, that the act violated its guarantee of equal status[18] contained in the act admitting it to statehood. Both states also contended it was unequal treatment for Congress to grant to the defendant states the revenues which had accumulated while the area in question was under federal control.[19] In their capacity as quasi-sovereign and *parens patriae* they claimed that their

15. Fisheries Case (United Kingdom v. Norway), Judgment of Dec. 18, 1951: I.C.J. Rep. 1951, p. 116, at 126, as cited by Brief for Alabama in Support of Motion for Leave to File Complaint, pp. 21, 23.

16. Under the terms of the Submerged Lands Act, the Atlantic and Pacific coastal states are limited in their claims to three nautical miles, while in the Gulf of Mexico the maximum permissible extent of any claim is three leagues or 10½ miles, provided that such claims have been outstanding at the time of entrance into the Union or have been ratified by the Congress since that time. See 67 STAT. 29, 31 (1953), 43 U.S.C.A. §§ 1301, 1312 (Supp. 1953). The petitioners argued that by ratifying the acts admitting them to statehood on an equal footing, the defendant states renounced all claims. The Court did not make mention of these claims, but they are of vital importance today. See page 84 *supra*.

17. The most valuable deposits in the Gulf of Mexico area are off the coasts of Louisiana and Texas.

18. U.S. CONST. Art. IV, § 3(1). The petitioners were referring to the interpretation which has been given this article. For a discussion of the "equal footing" clause, see LEGISLATIVE REFERENCE SERVICE, CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION 697 *et seq.* (Corwin ed. 1952). For a discussion of the acts admitting the states concerned to statehood, see Brief for Alabama in Support of Motion for Leave to File Complaint, App. B, pp. 83-85.

19. Effective June 5, 1950, the date of the decree of *United States v. California*, the defendant states of Louisiana, Texas, and California were required to account for all revenues obtained from the marginal seas. The United States had requested accounting from August 23, 1947, but this was amended by the Court to the date above. These funds were placed in trust with the defendant government officials to await final determination.

citizens had interests in proper allocation of federal property and also that the Submerged Lands Act constituted a threat to the fishing industries of their respective states. Alabama contended that its citizens would be denied access or severely hampered in gaining admission to the fishing waters off the coasts of defendant states if control of waters beyond the three-mile limit were granted to those states.[20] Rhode Island contended that the granting of territory beyond the three-mile international limit constituted a moral breach by the United States of its international agreements to recognize that boundary; that as a consequence Rhode Island citizens might be denied access to the fishing waters off Canada.[21] The petitioners claimed that since these contentions represented specific controversies and not abstract questions of political power, their leave to file complaint did not conflict with the principles established in *Massachusetts v. Mellon*.[22]

The defendant states contended that the petitioners had suffered no real injury, that they had no standing to contest the validity of the Submerged Lands Act on behalf of their citizens, that they had no standing to challenge the alleged boundary claims of the defendants, that the request for injunction was premature, that relief should be sought in the lower courts, and that the United States was an indispensable party to the suit. The petitioners replied to the last contention that, where the action of a government official is illegal, relief may be obtained by enjoining such action without making the government a party.[23] By going straight to the basic issue of the extent of

20. Alabama expressed concern that the State of Louisiana would adopt conservation measures or licensing requirements which would operate to deny or restrict Alabama citizens in their fishing privileges off the coast of Louisiana.

21. "By the treaty of Oct. 20, 1818 between Britain and the United States American fishermen have the right to fish off the southern coasts of Labrador and Newfoundland, and are excluded 'within three marine miles of any of the coasts . . . ' elsewhere in Canada." Rhode Island, Brief for Complainant, p. 12, citing 1 MALLOY, TREATIES, CONVENTIONS, INTERNATIONAL ACTS, PROTOCOLS AND AGREEMENTS 631 (1910) and 1 HACKWORTH, DIGEST OF INTERNATIONAL LAW 783 (1940).

"This implicit recognition of three-mile territorial limits was made explicit by the Treaty of Jan. 23, 1924 between Britain . . . and the United States which was binding on Canada as well as Newfoundland." Rhode Island, Brief for Complainant, p. 12, citing Treaty Series No. 685, 43 STAT. 1761 (1924), and 3 REPORTS OF INTERNATIONAL ARBITRAL AWARDS (U.N. Pub. 1949 V. 2) 1611 (1949).

22. 262 U.S. 447 (1923). This case has been consistently followed in determining the right of a state to sue for its citizens.

23. The complainants quoted from the case of Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682, 690 (1949): ". . . a suit against an officer is not a suit against the United States where 'the conduct against which specific relief is sought is beyond the officer's powers' under the Constitution." Rhode Island, Reply Brief for Complainant, p. 19.

Congress' property power, the Court either failed to take note of the questions so presented, or, by remaining silent, resolved them in the petitioners' favor. In upholding the power of Congress to determine the submerged lands issue the Supreme Court has apparently recognized the essentially political nature of the question. The Court may, however, still be called upon to interpret the Submerged Lands Act since the extent of control granted to the states remains to be determined.[24]

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CONSTITUTIONAL LAW—SEGREGATION IN PUBLIC SCHOOLS

Plaintiffs, Negro children, sought admission to public schools restricted by law[1] to the use of white children in Kansas, South Carolina, Virginia, Delaware, and the District of Columbia. In all of the state cases the plaintiffs alleged that the separate facilities provided for Negroes were unequal and that by being required to use the unequal facilities they were being deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. In the District of Columbia case the plaintiffs claimed that requiring them to use any separate facilities denied them due process of law guaranteed by the Fifth Amendment.

The Federal District Court in Kansas found the facilities to be equal for both Negro and white children and refused to order the Negroes' admission to white schools.[2] The Federal District Court in South Carolina found the facilities to be unequal, and ordered South Carolina to provide equal facilities but did not

24. Sen. J. Res. 145, 83d Cong., 2d Sess. (April 1, 1954), was one attempt to earmark the revenues from such lands for educational purposes. The United States Department of Interior has recently decided to lease the lands beyond the limits stated in the Submerged Lands Act.

1. (a) A Kansas statute permits, but does not require, cities of more than 15,000 population to maintain separate schools for white and Negro students. KAN. GEN. STAT. § 72-1724 (1949). (b) The South Carolina Constitution and statutes require segregation in public schools. S.C. CONST. Art. XI, § 7; S.C. CODE 21-751 (1952). (c) The Virginia Constitution and statutes require segregation in public schools. VA. CONST. § 140; VA. CODE § 22-221 (1950). (d) The Delaware Constitution and statutes require segregation in public schools. DEL. CONST. Art. X, § 2; DEL. CODE § 14-141 (1953). (e) District of Columbia statutes require segregation. 18 STAT., pt. 2, p. 33 (1873).

2. Court relied on the separate but equal doctrine of Plessy v. Ferguson, 163 U.S. 537, 544 (1896), from which it quoted: " 'The object of the [fourteenth] amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color. . . .' " Brown v. Board of Educ., 98 F. Supp. 797, 798 (D. Kan. 1951).